HIGH COURT OF UTTARAKHAND AT NAINITAL

(Court's order whether the case is or not approved for reporting)
(Chapter VIII, Rule 32 (2) (b)

Description of Case

Writ Petition No. 315 (S/S) 2007

Dal Chand ... Petitioner

Vs.

State of Uttarakhand and 3 ors. ... Respondents

(Approved for Reporting)

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Not approved for reporting

Dated of decision: 4th April 2007.

Initials of Judge

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IN THE HIGH COURT OF UTTARKAHDN AT NAINITAL

Writ Petition No. 315 (S/S) 2007

Dal Chand S/o Sri Kailash Chand,
Resident of Gandhi Park, Jaspur Tehsil Jaspur,
District Udham Singh Nagar. ...Petitioner.

Versus

1. State of Uttarakhand through the Secretary,
   Vidhyalavi Shiksha, Uttarakhand, Dehradun,
2. The Director, Vidhyalayi Shiksha, Uttarkhand,
   Mayur Vihar, Dehradun,
3. The Addl. Director of Education, Kumaon Division,
   Nainital,
4. Headmaster, Rajkiya Uchhattar Madhyamic Vidhyalaya,
   Tidaadi, District Bageshwar. ...Respondents

Sri Jitendra Chaudhary, learned counsel for the petitioner,
Sri H.M. Raturi, learned Standing Counsel for the State of Uttarakhand/ respondents.

Hon'ble M.M. Ghildiyal, J.

Sri Jitendra Chaudhary, learned counsel for the petitioner and Sri H.M. Raturi, learned Standing Counsel for the State of Uttarakhand/ respondents.

By means of this writ petition, the petitioner has prayed for the following reliefs:-

1) To issued a writ, order or direction in the nature of mandamus commanding and directing the respondent no. 4 i.e. Headmaster, Rajkiya Uchhattar Madhyamik Vidhyalaya, Tilaadi, District Bageshwar that he may relieve the petitioner form Rajkiya Uchhattar Madhyamik Vidhyalaya Tilaadi, Bageshwar to Rajkiya Uchhattar Madhyamik Vidhyalaya, Jagdishpur, Udham Singh Nagar in pursuance to transfer order

dated 03.10.2006 passed by the respondent no. 3 so that the petitioner may join his service at newly transferred place,

2) Or issue any other writ, order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the place.

3) Award to cost of the petition.

Stand of the petitioner is that he is working as Assistant Teacher (English) in Govt. Higher Secondary School, Tidaadi, district Bageshwar. The Addl. Director of Education, Kumaon Division, Nainital vide its order dated rd October 2006 transferred 5 Teachers, including the petitioner, by which the petitioner has been transferred form govt. Higher Secondary School, Tilaadi, Bageshwar to Govt. Higher Secondary School, Jagdishpur, Udham Singh Nagar. The said transfer was made against the newly created vacant post. It is mentioned in the transfer order that the Head of the Institution, before relieving any person to join at the new place of his posting shall insure that the person relieved is not appointed an ad-hoc-basis.

Learned counsel for the petitioner has submitted that the appointment of the petitioner was not on ad-hoc basis, but it was a regular appointment.

The transfer order also speaks that the Head of the Institution should not relieve the person, who is being transferred, until or unless a substitute is posted there. The impugned order further states that, in case, the post is not vacant at the Institution where the person is being transferred, the transfer order shall stand cancelled automatically.

A bare perusal of the transfer order, prima-facie it illustrate that the transferring authority while making transfers has not adopted precautions and even has not taken care as to whether the post is actually vacant or not in the Institution where the persons is being transferred. Further, though it is mentioned in the impugned order that the person, who is being transferred, should not be relieved by the Head of the Institution until or unless a substitute is posted there, but for relieving a person from that very Institution no arrangement for his substitute is made by the transferring authority. It is also mentioned in the transfer order that the ad-hoc persons should not be relieved by the Head of the Institution. It is pertinent to mention here that that in relation to the person appointed an ad-hoc basis, instead of passing their transfer order, it would have been to remain them posted in their respective Institutions. No doubt, the impugned order has created a lot of confusion in the minds of each and every person who has to deal with the transfer order viz. the petitioner, the Principal or the Headmaster of the Institution from where the petitioner is being relieved or to the Institution where the transferred person supposed to join.

In the present case in hand, the petitioner has asserted that his appointment is a regular one, though he has not annexed his appointment order. Since the petitioner has not filed his appointment order, the Court is also not in a position to ascertain as to whether the appointment of the petitioner is of ad-hoc nature or is on regular basis.

Submission of the learned counsel for the petitioner is that he is not being relieved by the Head Master of the Govt. Higher Secondary School, Tilaadi, district Bageshwar,

arbitrarily. But in my opinion, the Head Master is quite justified declining for relieve of the petitioner form the Institution, because no substitute in place of petitioner has been provided at Bageshwar, particularly in the matter where the impugned transfer order itself clarifies that till a substitute is provided, the Head Master shall not relieve any person in pursuance of the transfer order.

In these circumstances, I deem it fit and proper to direct the petitioner to move proper representation before the transferring authority who shall clarify all these doubts and shall pass appropriate order. In case, substitute of petitioner has been provided at Bageshwar and further the petitioner is a regular appointee teacher in L. T. Grade, in that case he will be permitted to be relieve from Bageshwar.

With these directions, the writ petition is finally disposed of. No order as to costs.

(M.M. Ghildiyal, J.)

April 4, 2007:
NCM: